

REMARKS

This is a full and timely response to the outstanding final Office Action mailed November 30, 2005. Upon entry of this response, Applicants respectfully submit that the currently pending claims are in condition for allowance. Reconsideration and allowance of the application and presently pending claims are respectfully requested. In addition, Applicant does not make any admissions regarding any other statements in the Office Action that are not explicitly referenced in this response.

I. Ultimate Appeal of this Application

Regrettably, the undersigned has observed a disturbing trend in the Patent Office of rejections being continued until appeal, only to have Examiners advance new grounds of rejections in response to Appeal Briefs, which re-open prosecution. In a recent telephone conversation with a different Examiner (in a different application), the Examiner confided to the undersigned that this trend was largely due to the increasing workload on the Examiners, and the need to act quickly on applications and responses.

Unfortunately, this practice imposes undue expenses on the Applicants, in the form of additional legal fees as well as government fees for the appeals. As it appears that this application is headed for appeal, Applicant sets forth the following additional, more complete remarks. Should the Examiner maintain the rejections, the undersigned intends to copy-and-paste these same remarks and distinctions into the Appeal Brief (thus, prosecution should not be re-opened at that time).

II. Fundamental Distinctions of Claimed Embodiments over Cited Art

Claims 1, 16, 17, 32, 33, 56, 74, 75, 89, 90, and 105 are independent claims and have each been rejected either under 35 U.S.C. § 102(e) or 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 6,633,564 to Steer (hereinafter referred to as "Steer"). The claims rejected under 35 U.S.C. § 102(e) have been rejected as allegedly unpatentable over *Steer* alone, and those rejected under 35 U.S.C. § 103(a) have been rejected as allegedly unpatentable over *Steer* in view of U.S. Patent Publication No. 2005/0058149 of Howe (hereinafter referred to as "*Howe*") or *Steer* in view of *Howe* and some additional, secondary art.

There is at least one fundamental distinction between the claimed embodiments and *Steer*, and Applicants respectfully submit the rejections of the instant claims should be withdrawn for at least the reason of this distinction. More specifically, the claimed embodiments are directed to methods and systems for suspending and resuming transmission of information without creating significant additional overhead, where one of the steps or components involves either "fragmenting the first data stream *without creating a fragment header in response to a higher second data stream priority*" or "fluidly resuming transmission of lower priority suspended data streams in accordance with the data stream transmission information preserved using the priority sorting mechanism *without creating new frame headers for the lower priority suspended data streams.*"

The Final Office Action explicitly admits that *Steer* teaches a system where "in order to resume transmission of (column 10 lines 16-33) of the interrupted packet, the MPEG block used for transmitting the *interrupting packet is provided with a*

continuation field." In other words, the Office Action admits that *Steer* does not teach a system incorporating either the limitation of "fragmenting the first data stream ***without creating a fragment header*** in response to a higher second data stream priority" or "fluidly resuming transmission of lower priority suspended data streams in accordance with the data stream transmission information preserved using the priority sorting mechanism ***without creating new frame headers for the lower priority suspended data streams***" because of the existence of the continuation field of *Steer*. This distinction between the claimed invention and *Steer* renders at least any rejection under 35 U.S.C. 102 improper, as a single cited prior art reference does not disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983).

Furthermore, Applicants submit that *Steer* teaches away from the claimed invention with respect to the above-highlighted limitations. *Steer* discloses systems and methods utilizing the DOCSIS and MPEG standards. Specifically, *each* DOCSIS packet of a data stream "is formed of a payload 21 to contain the ISO8802 data packet ***and a six byte header.***" *Steer*, col. 5, lines 20-22. Furthermore, the "MPEG blocks used for the transmission of DOCSIS packets" are "packaged with a 4 byte header 33." *Steer*, col. 6, lines 44-46. *Steer* discloses a system where resuming an interrupted packet requires an additional "pointer field 59" and a "continuation field 57" for each MPEG block. *See Steer*, FIG. 5. Furthermore, because *Steer* discloses a system utilizing DOCSIS packets packaged in MPEG blocks, the system disclosed in *Steer* may require "DOCSIS packets may be placed into multiple MPEG blocks." *Steer*, col. 8, lines 19-20. *Steer* discloses multiple levels of headers that are required for the systems and methods disclosed therein

to remain operable. Therefore, the reference would not suggest to a person of ordinary skill in the art, either alone or in combination with another reference, a system or method of the claimed invention.

The Final Office Action admits that *Steer* "does not teach packets without header being transmitted over the network." The Final Office Action then states that *Steer* in view of *Howe* teaches "header-less data transfer," which is allegedly motivated by the fact that "header-less data packets have fewer overheads (*sic*) than packets with header..." (Final Office Action at p. 9). Applicants respectfully disagree with the Office Action's general statements regarding the combination of these references. *Howe* discloses packets that are only "header-less as far as **not having a source and destination address attached to each packet**" for the purposes of making **network routing** more efficient. Further, *Howe* also discloses that "the Final Destination Router 4 may **have to reinsert the address** for delivery to Real-Time Receiver 5." In contrast, the claimed invention does not define systems or methods where a source or destination address are unknown; therefore, the application of *Howe* is improper, because any improved efficiencies taught by the reference are not realized in the same fashion as with the claimed invention. Furthermore, efficient network **routing** is not an objective of the claimed invention because the source and destination are known prior to transmission of data.

In addition, *Howe* discloses using header-less packets for routing purposes, but does not suggest in combination with the teachings of *Steer* how to eliminate the overhead imposed by *Steer* for interrupting a lower priority packet with a higher priority packet and subsequently resuming transmission of the lower priority packet. While *Steer*

teaches systems and methods for inserting packets into a data stream, *Howe* merely contains the term "header-less," and the teachings of these two references in combination do not indicate to one of ordinary skill in the art how to implement a system or method that anticipates or renders obvious the claimed invention. Simply removing the continuation field or the MPEG/DOCSIS packet headers of *Steer*, which is suggested by the Final Office Action on page 9, renders an inoperable system because *Steer* does not disclose, teach or suggest a system or method even operable in the absence of the abovementioned elements. *Steer* relies on the existence of at least a continuation field to produce an operable system or method, therefore, the particular combination of references that is suggested by the Final Office Action is improper because it produces an inoperable system or method.

For at least the abovementioned reasons, independent claims 1, 16, 17, 32, 33, 56, 74, 75, 89, 90, and 105 patently define over the cited art. Applicants respectfully submit that the application of the teachings of *Steer* and/or *Howe* is inappropriate, and for at least the foregoing reasons, the rejections should be withdrawn. Having set forth the foregoing, the undersigned will address other claims of the invention in more detail below.

III. Claim rejections under 35 U.S.C. § 102

The Final Office Action rejected currently pending claims 1, 3, 4, 5, 6, and 16 under 35 U.S.C. § 102(e) as allegedly anticipated by *Steer*. A proper rejection of a claim under 35 U.S.C. § 102 requires that a single prior art reference disclose each element of

the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983).

Both independent claim 1 and 16 contain the limitation “*without creating a fragment header in response to a higher second data stream priority*,” which, as explained above, the Office Action has admitted is an element absent from *Steer*. More specifically, the Office Action states *Steer* discloses that “in order to resume transmission of the interrupted packet, the MPEG block used for transmitting the interrupting packet is provided with a *continuation field*.” The Final Office Action at 6. Accordingly, Applicants respectfully submit that independent claims 1 and 16 are in condition for allowance as the cited reference does not disclose each element of the claim. Further, Applicants submit that claims 3, 4, 5, and 6 are likewise allowable because they depend from allowable independent claim 1 and contain all limitations of the claim.

IV. Claim rejections under 35 U.S.C. § 103

In order for a claim to be properly rejected under 35 U.S.C. §103, the teachings of the prior art reference(s) must suggest all features of the claimed invention to one of ordinary skill in the art. *See, e.g., In re Dow Chemical*, 837 F.2d 469, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981). Further, “[t]he PTO has the burden under section 103 to establish a prima facie case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” *In re Fine, Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

As has been acknowledged by the Court of Appeals for the Federal Circuit, The U.S. Patent and Trademark Office (“USPTO”) has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discussed the requirements of a *prima facie* case for obviousness. The section provides as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. Second, there must be a reasonable expectation of success. Finally the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art, and not based on applicant’s disclosure.

MPEP § 2143. Applicants submit that the rejections of the above-mentioned claims fail to meet this standard. Further, in making a rejection under 35 U.S.C. §103, the Examiner must view the references without the benefit of impermissible hindsight vision afforded by the claimed invention, and not in view of the teachings of Applicants’ disclosure.

MPEP § 2141.

Evidence of a suggestion, teaching, or motivation to combine prior art references may flow, *inter alia*, from the references themselves, the knowledge of one of ordinary skill in the art, or from the nature of the problem to be solved. *See In re Dembiczak*, 175 F.3d 994, 1000, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Although a reference need not expressly teach that the disclosure contained therein should be combined with

another, the showing of combinability, in whatever form, must nevertheless be "clear and particular." *Dembiczak*, 175 F.3d at 999, 50 U.S.P.Q.2d at 1617. It is well settled law that in order to properly support an obviousness rejection under 35 U.S.C. § 103, there must have been some teaching in the prior art to suggest to one skilled in the art that the claimed invention would have been obvious. *W.L. Gore & Associates, Inc. v. Garlock Thomas, Inc.*, 721 F.2d 1540, 1551 (Fed. Cir. 1983). More significantly, "both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." *In re Dow Chemical Company*, 837 F.2d 469, 473 (Fed. Cir. 1988).

Where there is no apparent disadvantage present in a particular prior art reference, then generally there can be no motivation to combine the teaching of another reference with the particular prior art reference. *Winner Int'l Royalty Corp. v. Wang*, No 98-1553 (Fed. Cir. January 27, 2000). Although the suggestion to combine references may flow from the nature of the problem, see *Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed.Cir.1996), "[d]efining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness," *Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH*, 139 F.3d 877, 880, 45 USPQ2d 1977, 1981 (Fed.Cir.1998). Therefore, "[w]hen determining the patentability of a claimed invention which combines two known elements, 'the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination.' " *In re Beattie*, 974 F.2d 1309, 1311-12, 24 U.S.P.Q.2d 1040, 1042 (Fed.Cir.1992) (quoting *Lindemann*, 730 F.2d at 1462, 221 U.S.P.Q. at 488).

It is well settled that “obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Furthermore, “the mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.”

In re Fritch, 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780 (Fed Cir. 1992).

A. Rejection of claim 7

The Office Action rejected claim 7 under 35 U.S.C. § 103(a) as allegedly unpatentable over *Steer* in view of *Howe*. In light of the above fundamental distinctions of the claimed embodiments over the cited art, Applicants respectfully request that the rejection of these claims be withdrawn because the cited reference do not disclose, teach or suggest all elements of the claimed invention. Also, Applicants respectfully submit that claim 7 is in condition for allowance for at least the reason the claim depends from allowable independent claim 1.

Applicants further submit that claim 7 is allowable because *Steer* and *Howe* are not properly combinable, or in other words, there exists no motivation to combine the cited references to arrive at the claimed invention. The Final Office Action states that the motivation to combine *Steer* and *Howe* is “that header-less data packets have fewer overheads than packets with header and as such more bandwidth efficient.” However, as mentioned above, *Steer* relies on a continuation field and MPEG/DOCSIS packet headers in order to produce a system that is operable. Removing these elements from *Steer*, which the Final Office Action states on page 9 is suggested by *Howe*, would render the

systems and methods of the *Steer* reference inoperable, and therefore not properly combinable. Furthermore, *Steer* does not suggest or provide a motivation for a system without frame headers, nor does the Final Office Action disclose any *apparent* disadvantages of the systems and methods of *Steer* that provide a proper motivation for combination with *Howe*.

Furthermore, Applicants respectfully submit that the Examiner, in making the rejections under 35 U.S.C. §103, has used impermissible hindsight vision afforded by the claimed invention, and has wrongly applied information in view of the teachings of Applicants' disclosure to make the obviousness rejections of the Final Office Action. Applicants contend that the Final Office Action rejects claim 7 merely on the basis that the *Howe* reference contains the term "header-less" instead of addressing all of the elements of the claimed invention. As mentioned above in reference to the independent claims, the Final Office Action does not properly cite a reference containing either of the limitations "*without creating a fragment header in response to a higher second data stream priority*" or "*fluidly resuming transmission of lower priority suspended data streams in accordance with the data stream transmission information preserved using the priority sorting mechanism without creating new frame headers for the lower priority suspended data streams.*"

Also, the Final Office Action does not cite references that can be used by a person of ordinary skill in the art to produce an operable system also incorporating the additional limitations of dependent claim 7. Applicants respectfully submit that the Final Office Action engages in an impermissible hindsight reconstruction of the claimed invention by

citing references that may contain similar or like terminology, as is the case with at least the *Howe* reference, while ignoring the structure and limitations of the claimed invention.

For at least the foregoing reasons, Applicants submit that claim 7 is allowable and respectfully request the rejection be withdrawn.

B. Rejection of claims 17-20, 22, 32-35, 37-39, 46, 51, 54-61, 65, 70, 72-80, 90-93, 95, and 105

The Office Action rejected claims 17-20, 22, 32-35, 37-39, 46, 51, 54-61, 65, 70, 72-80, 90-93, 95, and 105 under 35 U.S.C. § 103(a) as allegedly unpatentable over *Steer* in view of *Howe* and in view of U.S. Patent No. 5,757,771 to Li (hereinafter referred to as “*Li*”), in view of U.S. Patent No. 6,795,436 to Jouppi et al. (hereinafter referred to as “*Jouppi*”). In light of the above fundamental distinctions of the claimed embodiments over the cited art, specifically the *Steer* and *Howe* references, Applicants respectfully request that the rejection of these claims be withdrawn. Applicants also submit that the references are not properly combinable for at least the reasons discussed above in reference to claim 7. Applicants also submit that the claim rejections are based on an impermissible hindsight reconstruction of the claimed invention as discussed above in reference to claim 7.

Applicants submit that independent claim 17 is allowable for at least the reasons cited above in reference to fundamental distinctions of the claimed embodiments over the cited art and for at least the reason that *Steer* in view of *Howe* and further in view of *Li* do not disclose, suggest or teach all of the elements of the claimed embodiment. Applicants respectfully submit that claims 18-20 and 22 are allowable for at least the reason that they

depend from allowable independent claim 17. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Accordingly, Applicants submit that claims 17-20 and 22 are in condition for allowance and request that the rejection of these claims be withdrawn.

Applicants submit that independent claims 32 and 33 are allowable for at least the reasons cited above in reference to fundamental distinctions of the claimed embodiments over the cited art and for at least the reason that *Steer* in view of *Howe* and further in view of *Li* do not disclose, suggest or teach all of the elements of the claimed embodiment. Applicants respectfully submit that claims 34, 35, 37-39, 46, 51, 54 and 55 are allowable for at least the reason that they depend from allowable independent claim 33. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Accordingly, Applicants submit that claims 32-35, 37-39, 46, 51, 54 and 55 are in condition for allowance and request that the rejection of these claims be withdrawn.

Applicants submit that independent claim 56 is allowable for at least the reasons cited above in reference to fundamental distinctions of the claimed embodiments over the cited art and for at least the reason that *Steer* in view of *Howe* and further in view of *Li* do not disclose, suggest or teach all of the elements of the claimed embodiment. Applicants respectfully submit that claims 57-61, 65, 70, 72 and 73 are allowable for at least the reason that they depend from allowable independent claim 56. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Accordingly, Applicants submit that claims 56-61, 65, 70, 72 and 73 are in condition for allowance and request that the rejection of these claims be withdrawn.

Applicants submit that independent claims 74 and 75 are allowable for at least the reasons cited above in reference to fundamental distinctions of the claimed embodiments over the cited art and for at least the reason that *Steer* in view of *Howe* and further in view of *Li* do not disclose, suggest or teach all of the elements of the claimed embodiment. Applicants respectfully submit that claims 76-80 are allowable for at least the reason that they depend from allowable independent claim 75. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Accordingly, Applicants submit that claims 74-80 are in condition for allowance and request that the rejection of these claims be withdrawn.

Applicants submit that independent claim 90 is allowable for at least the reasons cited above in reference to fundamental distinctions of the claimed embodiments over the cited art and for at least the reason that *Steer* in view of *Howe* and further in view of *Li* do not disclose, suggest or teach all of the elements of the claimed embodiment. Furthermore, Applicants respectfully submit that claims 91-93 and 95 are allowable for at least the reason that they depend from allowable independent claim 90. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Accordingly, Applicants submit that claims 90-95 are in condition for allowance and request that the rejection of these claims be withdrawn.

C. Rejection of claims 8, 11, 12, 23, 26, 27, 31, 44, 49, 63, 68, 81, 84, 85, 96, 99, 100 and 104

The Office Action rejected claims 8, 11, 12, 23, 26, 27, 31, 44, 49, 63, 68, 81, 84, 85, 96, 99, 100 and 104 under 35 U.S.C. § 103(a) as allegedly unpatentable over *Steer* in

view of *Howe* in view of *Li* in view of *Jouppi* and further in view of U.S. Patent No. 6,181,693 to Maresca (hereinafter referred to as "*Maresca*"). In light of the above fundamental distinctions of the claimed embodiments over the cited art, Applicants respectfully request that the rejection of these claims be withdrawn because the cited references do not disclose, teach or suggest all elements of the claimed invention and, as discussed above, are not properly combinable because there exists no motivation to combine the cited references. Applicants also submit that the claim rejections are based on an impermissible hindsight reconstruction of the claimed invention as discussed above in reference to claim 7.

Applicants respectfully submit that claims 8, 11, and 12 are in condition for allowance for at least the reason the claims depend from allowable independent claim 1. Applicants submit that claims 23, 26, 27, and 31 are allowable for at least the reason that they depend from allowable independent claim 17. Similarly, Applicants submit that claims 44 and 49 are allowable for at least the reason that they depend from allowable independent claim 33. Applicants submit that claims 63 and 68 are allowable for at least the reason that they depend from allowable independent claim 56. Applicants further submit that claims 81, 84, and 85 are allowable for at least the reason that they depend from allowable independent claim 75. Finally, Applicants submit that claims 96, 99, 100, and 104 are allowable for at least the reason that they depend from allowable independent claim 90. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

D. Rejection of claims 9, 10, 24, 25, 43, 45, 47, 48, 50, 52, 62, 64, 66, 67, 69, 71, 82, 83, 97, and 98

The Office Action rejected claims 9, 10, 24, 25, 43, 45, 47, 48, 50, 52, 62, 64, 66, 67, 69, 71, 82, 83, 97, and 98 under 35 U.S.C. § 103(a) as allegedly unpatentable over *Steer* in view of *Howe* in view of *Li* in view of *Jouppi* in view of *Maresca* and further in view of U.S. Patent No. 5,497,371 to Ellis *et al.* (hereinafter referred to as “*Ellis*”). In light of the above fundamental distinctions of the claimed embodiments over the cited art, Applicants respectfully request that the rejection of these claims be withdrawn. Applicants further submit that the cited reference are not properly combinable because the Final Office Action does not provide a proper motivation to combine the references, as discussed above. Applicants also submit that the claim rejections are based on an impermissible hindsight reconstruction of the claimed invention as discussed above in reference to claim 7.

Applicants respectfully submit that claims 9 and 10 are in condition for allowance for at least the reason the claims depend from allowable independent claim 1. Applicants submit that claims 24 and 25 are allowable for at least the reason that they depend from allowable independent claim 17. Similarly, Applicants submit that claims 43, 45, 47-48, 50, and 52 are allowable for at least the reason that they depend from allowable independent claim 33. Applicants submit that claims 62, 64, 66, 67, 69, and 71 are allowable for at least the reason that they depend from allowable independent claim 56. Applicants further submit that claims 82 and 83 are allowable for at least the reason that they depend from allowable independent claim 75. Finally, Applicants submit that claims 97 and 98 are allowable for at least the reason that they depend from allowable

independent claim 90. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

E. Rejection of claims 13-15, 28-30, 40-42, 86-88, and 101-103

The Office Action rejected claims 13-15, 28-30, 40-42, 86-88, and 101-103 under 35 U.S.C. § 103(a) as allegedly unpatentable over *Steer* in view of *Howe* in view of *Li* in view of *Jouppi* in view of *Maresca* and further in view of U.S. Patent No. 4,688,225 to Fukami (hereinafter referred to as “*Fukami*”). In light of the above fundamental distinctions of the claimed embodiments over the cited art, Applicants respectfully request that the rejection of these claims be withdrawn. Further, Applicants submit that the cited references are not properly combinable because the Final Office Action does not provide a proper motivation to combine the references, as discussed above. Applicants also submit that the claim rejections are based on an impermissible hindsight reconstruction of the claimed invention as discussed above in reference to claim 7.

Applicants respectfully submit that claims 13-15 are in condition for allowance for at least the reason that the claims depend from allowable independent claim 1. Applicants submit that claims 28-30 are allowable for at least the reason that they depend from allowable independent claim 17. Similarly, Applicants submit that claims 40-42 are allowable for at least the reason that they depend from allowable independent claim 33. Applicants further submit that claims 86-88 are allowable for at least the reason that they depend from allowable independent claim 75. Finally, Applicants submit that claims 101-103 are allowable for at least the reason that they depend from allowable

independent claim 90. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

F. Rejection of claims 36 and 53

The Office Action rejected claims 36 and 53 under 35 U.S.C. § 103(a) as allegedly unpatentable over *Steer* in view of *Howe* in view of *Li* in view of *Jouppi* as applied to claim 33 above and further in view of U.S. Patent Publication No. 2002/0010793 by Noll (hereinafter referred to as “*NollP*”). In light of the above fundamental distinctions of the claimed embodiments over the cited art, Applicants respectfully request that the rejection of these claims be withdrawn. Applicants further submit that the cited references are not properly combinable for at least the reason that the Final Office Action does not provide a proper motivation to combine the selected references, as discussed above. Applicants also submit that the claim rejections are based on an impermissible hindsight reconstruction of the claimed invention as discussed above in reference to claim 7.

Applicants also respectfully submit that claims 36 and 53 are in condition for allowance for at least the reason the claims depend from allowable independent claim 33. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

V. Cited Art Made of Record

The cited art made of record has been considered, but is not believed to affect the patentability of the presently pending claims.

CONCLUSION

Applicants respectfully submit that all pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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